

ASSEMBLY BILL

No. 1026

Introduced by Assembly Member Levine

February 20, 2003

An act to add Section 1463.29 to the Penal Code, and to amend Sections 23538, 23540, 23542, 23546, 23548, 23550, 23552, 23575, and 23578 of, and to add Section 23587 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1026, as introduced, Levine. Vehicles: driving-under-the-influence: penalties.

(1) Existing law authorizes a court to require any person convicted of a first offense violation of certain driving-under-the-influence (DUI) provisions to install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device.

This bill, instead, would require the court to impose the specified sanction on a first-time DUI offender who is found by the court to have had 0.15% or more, by weight, of alcohol in his or her blood at arrest, or who is found to have refused to take a chemical test at the time of the arrest. The bill would authorize the court to impose the specified sanction on other first-time DUI offenders who have 2 or more prior moving traffic violations.

(2) Existing law requires a court to consider a concentration of alcohol in the person's blood of 0.20% or more, by weight, or the refusal of the person to take a chemical test as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant

probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation, when a person is convicted of violating specified DUI provisions.

This bill would decrease the required blood-alcohol concentration from 0.20% to 0.15%. The bill would make conforming changes in other, related provisions of law.

The bill would increase the minimum and maximum fines for violations of specified DUI provisions.

(3) Existing law imposes various fines and terms of imprisonment for a violation of a specified DUI provision.

This bill would require the court to impose additional fines when a person is convicted of violating the specified DUI provision as a repeat offender or with a blood-alcohol concentration of 0.15%, or more, by weight. Because local prosecutors would be required to plead and prove the additional facts supporting the enhancement, the bill would impose additional duties upon those prosecutors and would thus establish a state-mandated local program.

The bill would require all of the funds collected from the additional fines to be kept separate and apart from any other fines and forfeitures and be distributed by the county treasurer, as soon as practicable after their receipt, with 50% to be deposited in a special county account that would be used only for the purposes of funding DUI programs licensed under existing law, as specified, and 50% to be deposited in the county's Maddy Emergency Medical Services (EMS) Fund, as specified, and expended only for the purposes authorized for the money in that fund. Because the bill thereby would impose additional duties upon the county treasurer, it would establish a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Driving under the influence of alcohol or drugs, or a
4 combination of alcohol and drugs (DUI), continues to cause
5 devastating monetary and intangible damages to the residents of
6 California.

7 (b) The number of traffic fatalities related to alcohol in
8 California has increased three years in a row.

9 (c) Each year alcohol-related crashes in California cost the
10 public an estimated \$4 billion in monetary costs and \$7 billion in
11 quality of life losses.

12 (d) Repeat DUI offenders and those offenders with high
13 blood-alcohol concentrations (over 0.15 percent, by weight) are
14 much more likely to be involved in fatal crashes.

15 (e) Accordingly, it is the intent of the Legislature in enacting
16 this act to sanction with greater severity those offenders who are
17 most likely to cause the greatest damage and loss of life and to
18 reduce the number of alcohol-related crashes and fatalities in
19 California.

20 SEC. 2. Section 1463.29 is added to the Penal Code, to read:
21 1463.29. Notwithstanding Section 1463, all of the funds
22 collected under Section 23587 of the Vehicle Code shall be kept
23 separate and apart from any other fines and forfeitures and shall be
24 distributed by the county treasurer, as soon as practicable after
25 their receipt, as follows:

26 (a) Fifty percent shall be deposited in a special county account
27 that may be used only for the following purposes:

28 (1) In a county that does not have a driving-under-the-influence
29 program licensed under Section 11836 of the Health and Safety
30 Code, to fund the development, implementation, operation, and
31 maintenance of that program.

32 (2) In a county that has only an 18-month
33 driving-under-the-influence program, to fund the development,
34 implementation, operation, and maintenance of a 30-month

1 driving-under-the-influence program licensed under Section
2 11836 of the Health and Safety Code.

3 (b) Fifty percent shall be deposited in the county's Maddy
4 Emergency Medical Services (EMS) Fund established under
5 Section 1797.98a of the Health and Safety Code, and may be
6 expended only for the purposes authorized for the money in that
7 fund.

8 SEC. 3. Section 23538 of the Vehicle Code is amended to
9 read:

10 23538. (a) Except as provided in subdivision (d), if the court
11 grants probation to any person punished under Section 23536, in
12 addition to the provisions of Section 23600 and any other terms
13 and conditions imposed by the court, the court shall impose as a
14 condition of probation that the person be subject to one of the
15 following:

16 (1) Be confined in the county jail for at least 48 hours but not
17 more than six months, and pay a fine of at least three hundred
18 ninety dollars (\$390), but not more than one thousand dollars
19 (\$1,000). Except as provided in paragraph (2), the person's
20 privilege to operate a motor vehicle shall be suspended by the
21 ~~Department of Motor Vehicles pursuant to~~ *department under*
22 paragraph (1) of subdivision (a) of Section 13352. The court shall
23 require the person to surrender the driver's license to the court in
24 accordance with Section 13550.

25 (2) Pay a fine of at least three hundred ninety dollars (\$390) but
26 not more than one thousand dollars (\$1,000), and, if the person
27 gives proof of financial responsibility, as defined in Section
28 16430, to the ~~Department of Motor Vehicles~~ *department*, have the
29 privilege to operate a motor vehicle restricted for 90 days to
30 necessary travel to and from that person's place of employment
31 and to and from participation in a program described in
32 subdivision (b). If driving a motor vehicle is necessary to perform
33 the duties of the person's employment, the restriction also shall
34 allow the person to drive to locations within the person's scope of
35 employment. Whenever the driving privilege is restricted pursuant
36 to this paragraph, the person shall maintain proof of financial
37 responsibility for three years.

38 (3) If the court elects to order a 90-day restriction as provided
39 for in paragraph (2), the court shall order and advise the person of
40 the following matters:



(A) If the person's privilege to operate a motor vehicle is suspended under Section 13353.2, the court-ordered restriction does not allow the person to operate a motor vehicle unless the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated. The restriction of the driver's license described in paragraph (2) shall commence upon the reinstatement of the privilege to operate a motor vehicle.

(B) If a suspension was not imposed pursuant to Section 13353.2, the person shall be advised by the court that the person's driving privilege may be suspended by the department pursuant to subdivision (c) of Section 13352.4 until proof of financial responsibility is provided.

(b) In any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(1) The court shall refer a first offender whose blood-alcohol concentration was less than ~~0.20~~ 0.15 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(2) The court shall refer a first offender whose blood-alcohol concentration was ~~0.20~~ 0.15 percent or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(3) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until the person has

1 provided proof satisfactory to the ~~Department of Motor Vehicles~~
2 *department* of successful completion of a
3 driving-under-the-influence program licensed pursuant to Section
4 11836 of the Health and Safety Code.

5 (c) (1) The court shall revoke the person's probation pursuant
6 to Section 23602, except for good cause shown, for the failure to
7 enroll in, participate in, or complete a program specified in
8 subdivision (b).

9 (2) The court, in establishing reporting requirements, shall
10 consult with the county alcohol program administrator. The
11 county alcohol program administrator shall coordinate the
12 reporting requirements with the department and with the State
13 Department of Alcohol and Drug Programs. That reporting shall
14 ensure that all persons who, after being ordered to attend and
15 complete a program, may be identified for either (A) failure to
16 enroll in, or failure to successfully complete, the program, or (B)
17 successful completion of the program as ordered.

18 (d) Notwithstanding subdivision (a), if the offense occurred in
19 a vehicle requiring a driver with a class A or class B driver's license
20 or with an endorsement specified in Section 15278, the court shall
21 upon conviction order the department to suspend the driver's
22 privilege pursuant to paragraph (1) of subdivision (a) of Section
23 13352.

24 SEC. 4. Section 23540 of the Vehicle Code is amended to
25 read:

26 23540. If any person is convicted of a violation of Section
27 23152 and the offense occurred within seven years of a separate
28 violation of Section 23103, as specified in Section 23103.5,
29 23152, or 23153, which resulted in a conviction, that person shall
30 be punished by imprisonment in the county jail for not less than 90
31 days nor more than one year and by a fine of not less than ~~three~~
32 ~~hundred ninety dollars (\$390)~~ *seven hundred fifty dollars (\$750)*
33 nor more than one thousand ~~five hundred~~ *five hundred* dollars ~~(\$1,000)~~
34 *(\$1,500)*. The person's privilege to operate a motor vehicle shall
35 be suspended by the ~~Department of Motor Vehicles pursuant to~~
36 *department* under paragraph (3) of subdivision (a) of Section
37 13352. The court shall require the person to surrender the driver's
38 license to the court in accordance with Section 13550.

39 SEC. 5. Section 23542 of the Vehicle Code is amended to
40 read:

23542. If the court grants probation to any person punished under Section 23540, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year, and pay a fine of at least ~~three hundred ninety dollars (\$390)~~ *seven hundred fifty dollars (\$750)*, but not more than one thousand ~~five hundred dollars (\$1,000)~~ *(\$1,500)*. The person's privilege to operate a motor vehicle shall be suspended by the ~~Department of Motor Vehicles pursuant to department under~~ paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) All of the following:

(1) Be confined in the county jail for at least 96 hours, but not more than one year. A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively.

(2) Pay a fine of at least ~~three hundred ninety dollars (\$390)~~ *seven hundred fifty dollars (\$750)*, but not more than one thousand ~~five hundred dollars (\$1,000)~~ *(\$1,500)*.

(3) Have the privilege to operate a motor vehicle be restricted by the ~~Department of Motor Vehicles pursuant to department under~~ Section 13352.5. Until all conditions prescribed in this section are met, the person's driving privilege is suspended pursuant to paragraph (3) of subdivision (a) of Section 13352. This paragraph does not apply if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot

1 afford the program fee pursuant to paragraph (2) of subdivision (b)
2 of Section 11837.4 of the Health and Safety Code in order to
3 enable those persons to participate.

4 (B) Enroll and participate, for at least 30 months subsequent to
5 the date of the underlying violation and in a manner satisfactory
6 to the court, in a driving-under-the-influence program licensed
7 pursuant to Section 11836 of the Health and Safety Code. The
8 person shall complete the entire program subsequent to, and shall
9 not be given any credit for any program activities completed prior
10 to, the date of the current violation.

11 (c) The court shall advise the person at the time of sentencing
12 that the driving privilege shall not be restored until the person has
13 provided proof satisfactory to the ~~Department of Motor Vehicles~~
14 *department* of successful completion of a
15 driving-under-the-influence program licensed pursuant to Section
16 11836 of the Health and Safety Code.

17 SEC. 6. Section 23546 of the Vehicle Code is amended to
18 read:

19 23546. (a) If any person is convicted of a violation of Section
20 23152 and the offense occurred within seven years of two separate
21 violations of Section 23103, as specified in Section 23103.5,
22 23152, or 23153, or any combination thereof, which resulted in
23 convictions, that person shall be punished by imprisonment in the
24 county jail for not less than 120 days nor more than one year and
25 by a fine of not less than ~~three hundred ninety dollars (\$390)~~ *one*
26 *thousand dollars (\$1000)* nor more than ~~one thousand dollars~~
27 ~~(\$1,000)~~ *two thousand dollars (\$2,000)*. The person's privilege to
28 operate a motor vehicle shall be revoked by the ~~Department of~~
29 ~~Motor Vehicles~~ *department* as required in paragraph (5) of
30 subdivision (a) of Section 13352. The court shall require the
31 person to surrender his or her driver's license to the court in
32 accordance with Section 13550.

33 (b) Any person convicted of a violation of Section 23152
34 punishable under this section shall be designated as a habitual
35 traffic offender for a period of three years, subsequent to the
36 conviction. The person shall be advised of this designation
37 pursuant to subdivision (b) of Section 13350.

38 SEC. 7. Section 23548 of the Vehicle Code is amended to
39 read:

23548. (a) If the court grants probation to any person punished under Section 23546, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in the county jail for at least 120 days but not more than one year and pay a fine of at least ~~three hundred ninety dollars (\$390)~~ *one thousand dollars (\$1,000)* but not more than ~~one thousand dollars (\$1,000)~~ *two thousand dollars (\$2,000)*. The person's privilege to operate a motor vehicle shall be revoked by the ~~Department of Motor Vehicles pursuant to department under~~ paragraph (5) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23546, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. In lieu of the minimum term of imprisonment specified in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail for at least 30 days but not more than one year. The court ~~shall~~ *may* not order the treatment prescribed by this subdivision unless the person makes a specific request and shows good cause for the order, whether or not the person has previously completed a treatment program pursuant to paragraph (4) of subdivision (b) of Section 23542 or paragraph (4) of subdivision (b) of Section 23562. A person ordered to treatment pursuant to this subdivision shall apply to the court or to a board of review, as designated by the court, at the conclusion of the program to obtain the court's order of satisfaction. Only upon the granting of that order of satisfaction by the court may the program issue its certificate of successful completion and report the completion to the ~~Department of Motor Vehicles~~ *department*. A failure to obtain an order of satisfaction at the conclusion of the driving-under-the-influence program is a violation of probation. In order to enable all required persons to participate, each person shall pay the program costs commensurate with the person's ability to pay as determined pursuant to Section 11837.4 of the

1 Health and Safety Code. No condition of probation required
2 pursuant to this subdivision is a basis for reducing any other
3 probation requirement in this section or Section 23600 or for
4 avoiding the mandatory license revocation provisions of
5 paragraph (5) of subdivision (a) of Section 13352.

6 (c) In addition to the provisions of Section 23600 and
7 subdivision (a), if the court grants probation to any person
8 punished under Section 23546 who has not previously completed
9 a treatment program pursuant to paragraph (4) of subdivision (b)
10 of Section 23542 or paragraph (4) of subdivision (b) of Section
11 23562, and unless the person is ordered to participate in and
12 complete a driving-under-the-influence program under
13 subdivision (b), the court shall impose as a condition of probation
14 that the person, subsequent to the date of the current violation,
15 enroll and participate, for at least 18 months and in a manner
16 satisfactory to the court, in a driving-under-the-influence program
17 licensed pursuant to Section 11836 of the Health and Safety Code,
18 as designated by the court. The person shall complete the entire
19 program subsequent to, and shall not be given any credit for
20 program activities completed prior to, the date of the current
21 violation. Any person who has previously completed a 12-month
22 or 18-month program licensed pursuant to Section 11836 of the
23 Health and Safety Code shall not be eligible for referral pursuant
24 to this subdivision unless a 30-month licensed
25 driving-under-the-influence program is not available for referral
26 in the county of the person's residence or employment. The
27 program shall provide for persons who cannot afford the program
28 fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4
29 of the Health and Safety Code in order to enable those persons to
30 participate. No condition of probation required pursuant to this
31 subdivision is a basis for reducing any other probation requirement
32 in this section or Section 23600 or for avoiding the mandatory
33 license revocation provisions of paragraph (5) of subdivision (a)
34 of Section 13352.

35 SEC. 8. Section 23550 of the Vehicle Code is amended to
36 read:

37 23550. (a) If any person is convicted of a violation of Section
38 23152 and the offense occurred within seven years of three or more
39 separate violations of Section 23103, as specified in Section
40 23103.5, or Section 23152 or 23153, or any combination thereof,

which resulted in convictions, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than ~~three hundred ninety dollars (\$390)~~ *five thousand dollars (\$5,000)* nor more than ~~one thousand dollars (\$1,000)~~ *ten thousand dollars (\$10,000)*. The person's privilege to operate a motor vehicle shall be revoked by the ~~Department of Motor Vehicles pursuant to department~~ under paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) Any person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

SEC. 9. Section 23552 of the Vehicle Code is amended to read:

23552. (a) If the court grants probation to any person punished under Section 23550, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in a county jail for at least 180 days but not more than one year and pay a fine of at least ~~three hundred ninety dollars (\$390)~~ *five thousand dollars (\$5,000)* but not more than ~~one thousand dollars (\$1,000)~~ *ten thousand dollars (\$10,000)*. The person's privilege to operate a motor vehicle shall be revoked by the ~~Department of Motor Vehicles pursuant to department~~ under paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) In addition to subdivision (a), if the court grants probation to any person punished under Section 23550, the court may order as a condition of probation that the person participate, for at least 30 months subsequent to the underlying conviction and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. In lieu of the minimum term of imprisonment in subdivision (a), the court shall impose as a condition of probation under this subdivision that the person be confined in the county jail

1 for at least 30 days but not more than one year. The court shall not
2 order the treatment prescribed by this subdivision unless the
3 person makes a specific request and shows good cause for the
4 order, whether or not the person has previously completed a
5 treatment program pursuant to paragraph (4) of subdivision (b) of
6 Section 23542 or paragraph (4) of subdivision (b) of Section
7 23562. A person ordered to treatment pursuant to this subdivision
8 shall apply to the court or to a board of review, as designated by
9 the court, at the conclusion of the program to obtain the court's
10 order of satisfaction. Only upon the granting of that order of
11 satisfaction by the court may the program issue its certificate of
12 successful completion and report the completion to the
13 Department of Motor Vehicles. A failure to obtain an order of
14 satisfaction at the conclusion of the program is a violation of
15 probation. In order to enable all required persons to participate,
16 each person shall pay the program costs commensurate with the
17 person's ability to pay as determined pursuant to Section 11837.4
18 of the Health and Safety Code. No condition of probation required
19 pursuant to this subdivision is a basis for reducing any other
20 probation requirement in this section or Section 23600 or for
21 avoiding the mandatory license revocation provisions of
22 paragraph (7) of subdivision (a) of Section 13352.

23 (c) In addition to the provisions of Section 23600 and
24 subdivision (a), if the court grants probation to any person
25 punished under Section 23550 who has not previously completed
26 a treatment program pursuant to paragraph (4) of subdivision (b)
27 of Section 23542 or paragraph (4) of subdivision (b) of Section
28 23562, and unless the person is ordered to participate in, and
29 complete, a program under subdivision (b), the court shall impose
30 as a condition of probation that the person, subsequent to the date
31 of the current violation, enroll in and participate, for at least 18
32 months and in a manner satisfactory to the court, in a
33 driving-under-the-influence program licensed pursuant to Section
34 11836 of the Health and Safety Code, as designated by the court.
35 The person shall complete the entire program subsequent to, and
36 shall not be given any credit for program activities completed prior
37 to, the date of the current violation. Any person who has previously
38 completed a 12-month or 18-month driving-under-the-influence
39 program licensed pursuant to Section 11836 of the Health and
40 Safety Code shall not be eligible for referral pursuant to this

subdivision unless a 30-month driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code is not available for referral in the county of the person's residence or employment. No condition of probation required pursuant to this subdivision is a basis for reducing any other probation requirement in this section or Section 23600 or for avoiding the mandatory license revocation provisions of paragraph (7) of subdivision (a) of Section 13352.

SEC. 10. Section 23575 of the Vehicle Code is amended to read:

23575. (a) (1) In addition to any other provisions of law, the court ~~may shall~~ require ~~that any~~ a person convicted of a first offense violation of Section 23152 or 23153 *who is found by the court to have had 0.15 percent or more, by weight, of alcohol in his or her blood at the time of the arrest, or who is found to have refused to take a chemical test at the time of the arrest,* to install a certified ignition interlock device on any vehicle that the person owns or operates and prohibit that person from operating a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device. The court ~~shall give heightened consideration to applying this sanction to first offense violators with 0.20 percent or more, by weight, of alcohol in his or her blood at arrest, or with two or more prior moving traffic violations, or of persons who refused the chemical tests at arrest may apply this sanction to a person convicted of a first offense violation of Section 23152 or 23153 who is found by the court to have had less than 0.15 percent, by weight, of alcohol in his or her blood at the time of the arrest, but who has two or more prior moving violations.~~ If the court orders the ignition interlock device restriction, the term shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the ~~Department of Motor Vehicles department,~~ as specified in subdivision (a) of Section 1803, of the terms of the restriction in accordance with subdivision (a) of Section 1804. ~~The Department of Motor Vehicles department shall place the restriction in the person's records in the Department of Motor Vehicles department.~~

(2) The court shall require any person convicted of a violation of Section 14601.2 to install an ignition interlock device on any vehicle that the person owns or operates and *shall* prohibit the person from operating a motor vehicle unless the vehicle is

1 equipped with a functioning, certified ignition interlock device.
2 The term of the restriction shall be determined by the court for a
3 period not to exceed three years from the date of conviction. The
4 court shall notify the ~~Department of Motor Vehicles~~ *department*,
5 as specified in subdivision (a) of Section 1803, of the terms of the
6 restrictions in accordance with subdivision (a) of Section 1804.
7 The ~~Department of Motor Vehicles~~ *department* shall place the
8 restriction in the person's records in the ~~Department of Motor~~
9 ~~Vehicles~~ *department*.

10 (b) The court shall include on the abstract of conviction or
11 violation submitted to the ~~Department of Motor Vehicles~~
12 *department* under Section 1803 or 1816, the requirement and term
13 for the use of a certified ignition interlock device. The records of
14 the department shall reflect mandatory use of the device for the
15 term ordered by the court.

16 (c) The court shall advise the person that installation of an
17 ignition interlock device on a vehicle does not allow the person to
18 drive without a valid driver's license.

19 (d) Any person whose driving privilege is restricted by the
20 court pursuant to this section shall arrange for each vehicle with
21 an ignition interlock device to be serviced by the installer at least
22 once every 60 days in order for the installer to recalibrate and
23 monitor the operation of the device. The installer shall notify the
24 court if the device is removed or indicates that the person has
25 attempted to remove, bypass, or tamper with the device, or if the
26 person fails three or more times to comply with any requirement
27 for the maintenance or calibration of the ignition interlock device.
28 There is no obligation for the installer to notify the court if the
29 person has complied with all of the requirements of this article.

30 (e) The court shall monitor the installation and maintenance of
31 any ignition interlock device restriction ordered pursuant to
32 subdivision (a) or (d). If any person fails to comply with the court
33 order, the court shall give notice of the fact to the department
34 pursuant to Section 40509.1.

35 (f) (1) Pursuant to Section 13352, if any person is convicted of
36 a violation of Section 23152 or 23153, and the offense occurred
37 within seven years of one or more separate violations of Section
38 23152 or 23153 that resulted in a conviction, the person may apply
39 to the ~~Department of Motor Vehicles~~ *department* for a restricted
40 driver's license pursuant to Section 13352 that prohibits the person

1 from operating a motor vehicle unless that vehicle is equipped with
2 a functioning ignition interlock device, certified pursuant to
3 Section 13386. The restriction shall remain in effect for at least the
4 remaining period of the original suspension or revocation and until
5 all reinstatement requirements in Section 13352 are met.

6 (2) Pursuant to subdivision (g), the ~~Department of Motor~~
7 ~~Vehicles~~ *department* shall immediately terminate the restriction
8 issued pursuant to Section 13352 and shall immediately suspend
9 or revoke the privilege to operate a motor vehicle of any person
10 who attempts to remove, bypass, or tamper with the device, who
11 has the device removed prior to the termination date of the
12 restriction, or who fails three or more times to comply with any
13 requirement for the maintenance or calibration of the ignition
14 interlock device ordered pursuant to Section 13352. The privilege
15 shall remain suspended or revoked for the remaining period of the
16 originating suspension or revocation and until all reinstatement
17 requirements in Section 13352 are met.

18 (g) Any person whose driving privilege is restricted by the
19 ~~Department of Motor Vehicles~~ *department* pursuant to *department under*
20 Section 13352 shall arrange for each vehicle with an ignition
21 interlock device to be serviced by the installer at least once every
22 60 days in order for the installer to recalibrate the device and
23 monitor the operation of the device. The installer shall notify the
24 ~~Department of Motor Vehicles~~ *department* if the device is removed
25 or indicates that the person has attempted to remove, bypass, or
26 tamper with the device, or if the person fails three or more times
27 to comply with any requirement for the maintenance or calibration
28 of the ignition interlock device. There is no obligation on the part
29 of the installer to notify the department or the court if the person
30 has complied with all of the requirements of this section.

31 (h) Nothing in this section permits a person to drive without a
32 valid driver's license.

33 (i) The ~~Department of Motor Vehicles~~ *department* shall include
34 information along with the order of suspension or revocation for
35 repeat offenders informing them that after a specified period of
36 suspension or revocation has been completed, the person may
37 either install an ignition interlock device on any vehicle that the
38 person owns or operates or remain with a suspended or revoked
39 driver's license.

(j) Pursuant to this section, out-of-state residents who otherwise would qualify for an ignition interlock device restricted license in California shall be prohibited from operating a motor vehicle in California unless that vehicle is equipped with a functioning ignition interlock device. No ignition interlock device is required to be installed on any vehicle owned by the defendant that is not driven in California.

(k) If a person has a medical problem that does not permit the person to breathe with sufficient strength to activate the device, then that person shall only have the suspension option.

(l) This section does not restrict a court from requiring installation of an ignition interlock device and prohibiting operation of a motor vehicle unless that vehicle is equipped with a functioning, certified ignition interlock device for any persons to whom subdivision (a) or (b) does not apply. The term of the restriction shall be determined by the court for a period not to exceed three years from the date of conviction. The court shall notify the ~~Department of Motor Vehicles~~ *department*, as specified in subdivision (a) of Section 1803, of the terms of the restrictions in accordance with subdivision (a) of Section 1804. The ~~Department of Motor Vehicles~~ *department* shall place the restriction in the person's records in the ~~Department of Motor Vehicles~~ *department*.

(m) For purposes of this section, "vehicle" does not include a motorcycle until the state certifies an ignition interlock device that can be installed on a motorcycle. Any person subject to an ignition interlock device restriction ~~shall~~ *may* not operate a motorcycle for the duration of the ignition interlock device restriction period.

(n) For purposes of this section, "owned" means solely owned or owned in conjunction with another person or legal entity. For purposes of this section, "operates" includes operating vehicles that are not owned by the person subject to this section.

(o) For the purposes of this section, bypass includes, but is not limited to, either of the following:

(1) Any combination of failing or not taking the ignition interlock device rolling retest three consecutive times.

(2) Any incidence of failing or not taking the ignition interlock device rolling retest, when not followed by an incidence of passing the ignition interlock rolling retest prior to turning the ~~vehicles's~~ *vehicle's* engine off.

1 SEC. 11. Section 23578 of the Vehicle Code is amended to
2 read:

3 23578. In addition to any other provision of this code, if any
4 person is convicted of a violation of Section 23152 or 23153, the
5 court shall consider a concentration of alcohol in the person's
6 blood of ~~0.20~~ 0.15 percent or more, by weight, or the refusal of the
7 person to take a chemical test as a special factor ~~which~~ *that* may
8 justify enhancing the penalties in sentencing, in determining
9 whether to grant probation, and, if probation is granted, in
10 determining additional or enhanced terms and conditions of
11 probation.

12 SEC. 12. Section 23587 is added to the Vehicle Code, to read:

13 23587. (a) If a person is convicted of a violation of Section
14 23152 and the court finds that the person had a blood-alcohol
15 concentration less than 0.15 percent, by weight, at the time of the
16 arrest, the court shall impose the following penalties in addition to
17 any other penalty prescribed by law:

18 (1) If the person is convicted of a violation of Section 23152
19 that is punishable under Section 23540, the punishment shall be
20 enhanced by an additional fine of five hundred dollars (\$500).

21 (2) If the person is convicted of a violation of Section 23152
22 that is punishable under Section 23546, the punishment shall be
23 enhanced by an additional fine of one thousand dollars (\$1,000).

24 (3) If the person is convicted of a violation of Section 23152
25 that is punishable under Section 23550, the punishment shall be
26 enhanced by an additional fine of two thousand five hundred
27 dollars (\$2,500).

28 (b) If a person is convicted of a violation of Section 23152 and
29 the court finds that the person had a blood-alcohol concentration
30 of 0.15 percent or more, by weight, at the time of the arrest, the
31 court shall impose the following penalties in addition to any other
32 penalty prescribed by law:

33 (1) If the person is convicted of a violation of Section 23152
34 that is punishable under Section 23536, the punishment shall be
35 enhanced by an additional fine of five hundred dollars (\$500).

36 (2) If the person is convicted of a violation of Section 23152
37 that is punishable under Section 23540, the punishment shall be
38 enhanced by an additional fine of two thousand five hundred
39 dollars (\$2,500).

1 (3) If the person is convicted of a violation of Section 23152
2 that is punishable under Section 23546, the punishment shall be
3 enhanced by an additional fine of five thousand dollars (\$5,000).

4 (4) If the person is convicted of a violation of Section 23152
5 that is punishable under Section 23550, the punishment shall be
6 enhanced by an additional fine of ten thousand dollars (\$10,000).

7 SEC. 13. Notwithstanding Section 17610 of the Government
8 Code, if the Commission on State Mandates determines that this
9 act contains costs mandated by the state, reimbursement to local
10 agencies and school districts for those costs shall be made pursuant
11 to Part 7 (commencing with Section 17500) of Division 4 of Title
12 2 of the Government Code. If the statewide cost of the claim for
13 reimbursement does not exceed one million dollars (\$1,000,000),
14 reimbursement shall be made from the State Mandates Claims
15 Fund.

